

State of Washington
REPORT OF EXAMINATION
FOR WATER RIGHT CHANGE

WR File NR: CR4-CV1-3P18
WR Doc ID: 5120197

Change in Season of Use

| PRIORITY DATE | WATER RIGHT NUMBER |
|---------------|------------------------|
| March 5, 1920 | Reservoir Permit No. 9 |

| MAILING ADDRESS |
|---|
| Chewuch Canal Company (CCC) c/o Roger Rowatt, Board President P.O. Box 281, Winthrop WA 98862 |

| Total Quantity Authorized |
|---------------------------|
| ANNUAL QUANTITY (AF/YR) |
| 1,000 |

| Purpose | | |
|-------------------|----------------|--------------------------|
| PURPOSE | NON-ADDITIVE | PERIOD OF USE (mm/dd) |
| Reservoir Storage | 1,000 ac-ft/yr | 01/01 – 07/31 |

REMARKS

This authorization to extend the filling period through July is valid once the system infrastructure to deliver water to Pearrygin Lake is complete.

| Source Location | | | |
|-----------------|---------------|--------------|-------------------------------|
| COUNTY | WATERBODY | TRIBUTARY TO | WATER RESOURCE INVENTORY AREA |
| Okanogan | Chewuch River | Methow River | 48 |

| SOURCE FACILITY/DEVICE | PARCEL | WELL TAG | TWN | RNG | SEC | QQ Q | LATITUDE | LONGITUDE |
|--------------------------|----------------|----------|-----|-----|-----|--------------|----------|-------------|
| Pearrygin Lake Reservoir | Pearrygin Lake | NA | 35N | 21E | 2 | SW/NW/ NE | 48.56684 | -120.175612 |

Datum: NAD83/WGS84

Place of Use (See Map: Attached 1)

LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE

Pearrygin Lake is located in Section 36, T. 35 N., R. 21 E.W.M.; within the NE1/4 of Section 1, T. 34 N., R. 21 E.W.M.; within the SW1/4SW1/4 of Section 31, T. 35 N., R. 22 E.W.M.; and within the NW1/4NW1/4 of Section 6, T. 34 N., R. 22 E.W.M, Okanogan County. The point of diversion is located within the NW1/4NE1/4 of Section 2, T. 35 N., R. 21 E.W.M., Okanogan County.

Proposed Works

Water is diverted from the Chewuch River into the CCC Canal system upstream of the town of Winthrop. The Canal generally parallels the Chewuch River from the point of diversion downstream approximately 6 miles to the Dempsey Drop where water is split between the Wright Lateral ditch that delivers water to Pearrygin Lake or continues down the CCC Canal to its shareholders. The Wright Lateral conveys flow from the CCC Canal to Pearrygin Lake. Proposed changes to infrastructure include improving the Wright Lateral Ditch so that up to 27 cfs may be delivered to the lake and constructing new pipelines (Silverline and Lake Creek) that will serve as the main pathway for future Pearrygin Lake refilling.

Development Schedule

| BEGIN PROJECT | COMPLETE PROJECT | PUT WATER TO FULL USE |
|---------------|------------------|-----------------------|
| May 1, 2015 | October 31, 2016 | October 31, 2018 |

The Chewuch Canal Company system improvements are expected to begin by May 1, 2015. Upgrades to the Wright Lateral Ditch and construction of the Silverline and Lake Creek pipelines are expected to be completed by October 31, 2017. By October 31, 2018 CCC will submit at least one full year of monitoring data from the improved system. **ALL of CCC's inputs into Pearrygin Lake must be monitored.**

Measurement of Water Use

| | |
|---|--|
| How often must water use be measured? | Hourly |
| How often must water use data be reported to Ecology? | Annually (By January 31 st) |
| What should be reported? | Total annual volume diverted into the reservoir; daily volume and filling rate |

Provisions

General Provisions

Reservoir filling after May 1 is only authorized if CCC upgrades their deliver pipelines and measures all of their inputs into Pearrygin Lake.

Instream Flow

This authorization allows the Chewuch Canal Company to divert water from the Chewuch River during an extended season (May 1 through July 31) subject to the adopted instream flows for the Chewuch River (WAC 173-548-020). Diversions for reservoir refilling are authorized when instream flows at Station No. 12.4475.00 are equal to or exceed the following values:

| Month | Day | Chewuch River Base Flow (cfs) |
|-------|-----|-------------------------------|
| May | 1 | 215 |
| | 15 | 290 |
| June | 1 | 320 |
| | 15 | 320 |
| July | 1 | 292 |
| | 15 | 110 |

Measurements, Monitoring, Metering and Reporting

Approved measuring devices must be installed and maintained to allow the period and quantity of Pearrygin Lake refilling from the Chewuch River source to be reported in accordance with the rule "Requirements for Measuring and Reporting Water Use", WAC 173-173, which describes the requirements for data accuracy, device installation and operation, and information reporting. Recorded water use data documenting Pearrygin Lake refilling shall be submitted via the Internet by January 31 on an annual basis. To set up an Internet reporting account, contact Ecology's Central Regional Office.

Department of Fish and Wildlife Requirement(s)

The intake(s) must be screened in accordance with Department of Fish and Wildlife screening criteria (pursuant to RCW 77.57.010, RCW 77.57.070, and RCW 77.57.040). Contact the Department of Fish and Wildlife, 600 Capitol Way N, Olympia, WA 98501-1091. Attention: Habitat Program, Phone: (360) 902-2534 if you have questions about screening criteria. <http://www.wdfw.wa.gov/reg/regions.htm>

Easement and Right-of-Way

The water source and/or water transmission facilities are not wholly located upon land owned by the applicant. Issuance of a water right change authorization by this Department does not convey a right of access to, or other right to use, land which the applicant does not legally possess. Obtaining such a right is a private matter between applicant and owner of that land.

Schedule and Inspections

Department of Ecology personnel, upon presentation of proper credentials, will have access at reasonable times, to the project location, and to inspect at reasonable times, records of water use, wells, diversions, measuring devices and associated distribution systems for compliance with water law.

Findings of Facts

Upon reviewing the investigator's report, I find all facts, relevant and material to the subject application, have been thoroughly investigated. Furthermore, I concur with the investigator that water is available from the source in question; that there will be no impairment of existing rights; that the purpose(s) of use are beneficial; and that there will be no detriment to the public interest.

Therefore, I ORDER approval of Change Application No. CR4-CV1-3P18 for Reservoir Permit 9 subject to existing rights and the provisions specified above.

Your Right To Appeal

You have a right to appeal this Order to the Pollution Control Hearings Board (PCHB) within 30 days of the date of receipt of this Order. The appeal process is governed by Chapter 43.21B RCW and Chapter 371-08 WAC. "Date of receipt" is defined in RCW 43.21B.001(2).

To appeal you must do the following within 30 days of the date of receipt of the Order.

File your appeal and a copy of this Order with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.

- Serve a copy of your appeal and this Order on Ecology in paper form - by mail or in person. (See addresses below.) E-mail is not accepted.


- You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

| Address and Location Information | |
|--|--|
| Street Addresses | Mailing Addresses |
| Department of Ecology Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503 Pollution Control Hearings Board 111 Israel RD SW STE 301 Tumwater, WA 98501 | Department of Ecology Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608 Pollution Control Hearings Board PO Box 40903 Olympia, WA 98504-0903 |

For additional information visit the Environmental Hearings Office Website: <http://www.eho.wa.gov>

To find laws and agency rules visit the Washington State Legislature Website: <http://www.leg.wa.gov/CodeReviser>

Signed at Yakima, Washington, this 29 day of April 2013.


 Mark Kemner, Section Manager
 Water Resources Program — Department of Ecology, Central Region Office

INVESTIGATOR'S REPORT

BACKGROUND

Description and Purpose of Proposed Change

Chewuch Canal Company (CCC) has applied to change the season of refilling to year-round for existing Reservoir Permit No. 9 (CR4-CV1-3P18) authorizing storage in Pearrygin Lake. Currently, the CCC Reservoir Permit allows diversion of up to 1,000 ac-ft/yr/year from the Chewuch River during the non-irrigation season period of October 1 to May 1. The requested change of season of use is intended to allow CCC to make operational changes to enable the CCC to reduce its diversion from the Chewuch River and improve stream flows during the critical late summer and fall period beginning August 1. The project will also improve the ability of the CCC to deliver water to its customers by renovating much of its water conveyance and delivery system. No change to the total diverted quantity of 1,000 ac-ft/yr is proposed by this application.

The existing reservoir, Pearrygin Lake, would not be modified by approval of this application, but water conveyance and management infrastructure improvements associated with diversion into and refilling of Pearrygin Lake would be implemented if this application is approved. A metering system would also be installed to provide documentation of reservoir refilling periods and amounts, as in the proposed April 10, 2013, Monitoring Plan.

Certificate of Water Right No. 497 authorizes CCC to divert water stored in Pearrygin Lake under Reservoir Permit 9 for irrigation. The CCC also diverts irrigation water from the Chewuch River based on Water Right Claim No. 095223. No change to either the irrigation certificate or claim is proposed under this application; however, CCC has entered into a Diversion Reduction Agreement with Trout Unlimited that limits the timing and quantity of their diversion under certain conditions to benefit in-stream flows in the Chewuch River.

Table 1: Attributes of the Existing Water Right and Proposed Change

| Attributes | | Proposed |
|---|--|------------------|
| Name | Chewuch Canal Company | same |
| Priority Date/ Change Application Date | March 5, 1920 | February 3, 2012 |
| Instantaneous Quantity | not listed | |
| Annual Quantity | 1,000 ac-ft/yr | 1,000 ac-ft/yr |
| Purpose of Use | Storage | Storage |
| Period of Filling | Non-Irrigation season (October 1 to May 1) | Year-Round |
| Place of Use | The authorized place of storage (Pearrygin Lake) is: Section 36, T. 35 N., R. 21 E.W.M.; within the NE1/4 of Section 1, T. 34 N., R. 21 E.W.M.; within the SW1/4SW1/4 of Section 31, T. 35 N., R. 22 E.W.M.; and within the NW1/4NW1/4 of Section 6, T. 34 N., R. 22 E.W.M, Okanogan County. | same |
| Point of Diversion | The point of diversion is located within the NW1/4NE1/4 of Section 2, T. 35 N., R. 21 E.W.M., Okanogan County. | No Change |

Legal Requirements for Proposed Change

The following is a list of requirements that must be met prior to authorizing the proposed change to Reservoir Permit 9.

Public Notice

A notice of application was duly published in accordance with RCW 90-42.040(5) in the Methow Valley News on June 27 and July 4, 2012. A single protest from the Okanogan Wilderness League (OWL) was received on July 23, 2012.

State Environmental Policy Act (SEPA)

On August 1, 2012, Perry Huston, the Director of Okanogan County Planning issued a Determination of Non-Significance for CCC's project proposal.

Water Resources Statutes and Case Law

RCW 90.03.380(1) states that a water right that has been put to beneficial use may be changed. The point of diversion, place of use, and purpose of use may be changed if it would not result in harm or injury to other water rights.

INVESTIGATION

History of Water Use

Reservoir Permit No. 9 is a water right to divert water from the Chewuch River and store 1,000 ac-ft/yr in Pearrygin Lake. This quantity is approximately equal to the top 5 feet of the lake. Reservoir Permit No. 9 has a priority date of March 8, 1920. The Chewuch Canal Company (CCC) is authorized to divert water for storage only during the non-irrigation season, from October 1 to May 1. According to the Declaration of Roger Rowatt, President of the Board of Directors, CCC has diverted water to fill the top 5 feet of the lake each year since the permit was authorized in 1920. No direct measurement of diversion flows into the lake is currently conducted, with the refilling process based directly on reference to lake levels. Mr. Rowatt has also noted that CCC typically tries to get as much water to the reservoir each fall as possible before winter icing prevents diversion, because of uncertainty about spring availability. Because of icing, CCC is not typically able to begin diverting each year until late March or April to fill Pearrygin Lake.

The Chewuch Canal Company (CCC) has two other water rights relevant to this change application:

- Water Right Claim No. 095223 authorizes the diversion of up to 56 cubic feet per second (cfs) from the Chewuch River for irrigation purposes from May 1 to October 1. Water Right Claim No. 095223 was filed under the provision of the Claims Registration Act of 1967 and is based upon Water Right No. 60493, filed on January 27, 1910. The claim asserts the right to divert 56 cfs and 16,656 ac-ft/yr for the irrigation of 1454 acres. The water was reported by CCC to be first put to use in May 1910.
- Certificate No. 497 is a water right to beneficially use the water stored in Pearrygin Lake for irrigation during the season. A Certificate was issued in 1931 confirming that water stored in Pearrygin Lake had been beneficially used to irrigate lands within CCC's place of use. A change in place of use of Certificate No. 497 was authorized by a Certificate of Change, Vol. 42; page 126

issued April 16, 1973. This change authorized lands within parts of Pearrygin Lake State Park to be added to the place of use.

Since 1998, when a new fish screen was installed at the diversion from the Chewuch River, CCC has been physically limited to a diversion rate of 34 cfs. In 2009, the "unincorporated" CCC water users (users supplied water by CCC under a separate agreement) in the lower Chewuch Canal voluntarily agreed to permanently reduce the quantity of water they receive from CCC in exchange for a piped system for their deliveries from the end of the CCC canal. This reduction totaled 0.5 cfs, which CCC agreed to permanently refrain from diverting at the headgate. CCC's maximum diversion during the irrigation season is currently 33.5 cfs, which is the maximum diversion rate possible minus the permanent 0.5 cfs reduction. The current maximum diversion rate for reservoir refilling during the non-irrigation season remains at 34 cfs.

Instream Flow Concerns and Diversion Reduction Agreements

Low instream flows in the Chewuch River are a primary limiting factor for salmonids, including species listed under the federal Endangered Species Act (ESA). The State of Washington adopted an instream flow rule for the Chewuch River as part of WAC 173-548 (Water Resources Program in the Methow River Basin, WRIA 48). The effective date of this rule is December 28, 1976. New water rights approved after the date of the rule are subject to instream flows as specified in the rule, based on flows at the Chewuch gauge (USGS #12448000) located at the confluence of the Chewuch and Methow Rivers. The priority dates of Reservoir Permit 9 and associated water rights (Water Right Claim No. 095223 and Certificate No. 497) are senior to, and therefore not subject to, the instream flow rule; however CCC has entered into separate diversion reduction agreements to support improvement of fish habitat and instream flows in the Chewuch River below its diversion point.

The Bureau of Reclamation entered into a temporary Diversion Reduction Agreement with the CCC. The agreement called for CCC, in exchange for compensation, to voluntarily reduce its authorized diversion to benefit aquatic habitat and salmonids when flows at the Chewuch gauge were below 200 cfs for 7 consecutive days. This agreement remained in place until the end of the 2009 irrigation season.

A permanent Diversion Reduction Agreement between CCC and Trout Unlimited is being considered, also with the intent of benefitting salmonid habitat. The agreement includes the following conditions for diversion reduction:

In Normal Water Years:

- Within the limits of its water right, CCC will be allowed to fill Pearrygin Lake each year beginning March 15 whenever flows in the Chewuch River and the USGS Gauge #12448000 exceed 100 cfs.
- At any time between May 1 through June 14 when flow at the USGS Gauge # 12448000 falls below 100 cfs CCC shall reduce its diversion from the Chewuch River to not more than 24 cfs for so long as the flow remains below 100 cfs.
- Once the flows at the USGS Gauge # 12448000 falls below 100 cfs after June 15, CCC will not divert more than 24 cfs from the Chewuch River again through March 15 of the following year.

In Extreme Low Flow Years (Chewuch River is less than 100 cfs on March 15):

- Whenever possible and within the limits of its water right, CCC will continue to fill Pearrygin Lake past when normal irrigation diversions begin on May 1 into May and June. CCC will be allowed to make such diversions from the Chewuch River when the flow in the river exceeds 100 cfs.
- When it is not possible for the CCC, to satisfy their projected actual demand for irrigation and fill the reservoir simultaneously under the terms in above, CCC may divert from the river at a rate necessary, within the limits of its water right, to fill Pearrygin Lake up to May 1, regardless of the flow in the river. In diverting from the river at flows below 100 cfs, CCC, in consultation with WWP and NOAA Fisheries, will make its best effort to manage its diversions to protect fish.
- Once the flows at the USGS Gauge #12448000 falls below 100 cfs after July 1 in an Extreme Low Flow Year, CCC will not divert more than 24 cfs from the Chewuch River again through March 15 of the following year.

These flows are lower than the adopted instream flows during the April 1–July 31 period. For the agreement to be the exclusive operational basis of the Chewuch River diversion for storing water in Pearrygin Lake, Ecology would need to waive its adopted instream flow in WAC 173-548-020.

Purpose of Change Request

The primary purpose of this application for change is to reduce or eliminate fall diversion and reservoir refilling allowed by Reservoir Permit No. 9 in exchange for diverting and storing water in the earlier part of the irrigation season when stream flows are higher. The goal is to improve fish habitat in the Chewuch River downstream of the diversion during the fall period, when instream flows are typically much lower and flow is a primary limiting factor. At the present time, CCC's water right authorizes refilling Pearrygin Lake any time outside the irrigation season. Practically, the window of opportunity when water can be diverted into Pearrygin Lake is much shorter. CCC needs to turn water out of the canal in the late fall to do maintenance and before winter icing prevents diversion. Because of uncertainty about water availability in the spring due to late runoff and continuing winter icing conditions, CCC maximizes its ability to divert water into Pearrygin Lake in the fall. CCC is not typically able to begin diverting each year until late March or April.

The permanent Diversion Reduction Agreement limits diversions during the fall to 24 cfs from the current limit of 34, when flows are below 100 cfs. Approval of this change request, in combination with the Diversion Reduction Agreement, is expected to improve salmonid habit during the current fall refilling period (October 1 to cessation of refilling due to icing).

Overriding Consideration of Public Interest (OCPI) Request

In March 2012, as part of supporting documents for this change request, Trout Unlimited submitted an Overriding Consideration of the Public Interest (OCPI) analysis to Ecology. TU and the CCC were requesting that Ecology use this analysis to support authorizing the change in timing for reservoir filling without being subject to minimum instream flows established for the Chewuch River under WAC 173-548 (and still be subject to their permanent Diversion Reduction Agreement). Ecology may choose to authorize such a proposal under Chapter 90.54 Revised Code of Washington (RCW). TU's OCPI request outlined the public benefits of CCC's project including:

- Eliminating or reducing October and November diversions
- Increased instream flows to improve stream temperatures
- Mitigation of late summer low flows exacerbated by climate change
- Facilitation of future diversion reductions by CCC

However, during this investigation CCC and Ecology determined that additional monitoring information on lake refilling practices is needed to make a defensible determination of the public benefits of the project.

Prior to any reservoir filling after May 1, the CCC must upgrade the Wright Lateral and install new pipelines (Silverline and Lake Creek) and flow meters as discussed in the April 10, 2013, Monitoring Plan. The data collected by the measuring devices described in the plan may later be used to consider CCC's request to waive the instream flow provision. For such consideration, the CCC shall provide Ecology with its detailed records generated by the metering system, its operation rules and diversion rates for the Chewuch River headworks, the new infrastructure at Pearrygin Lake, and lake level records for Pearrygin Lake.

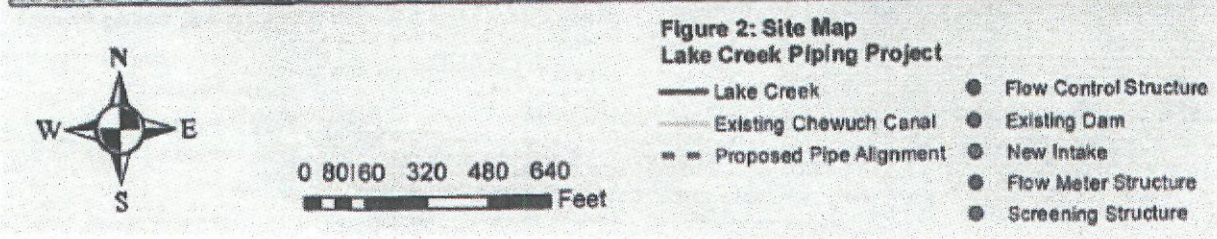
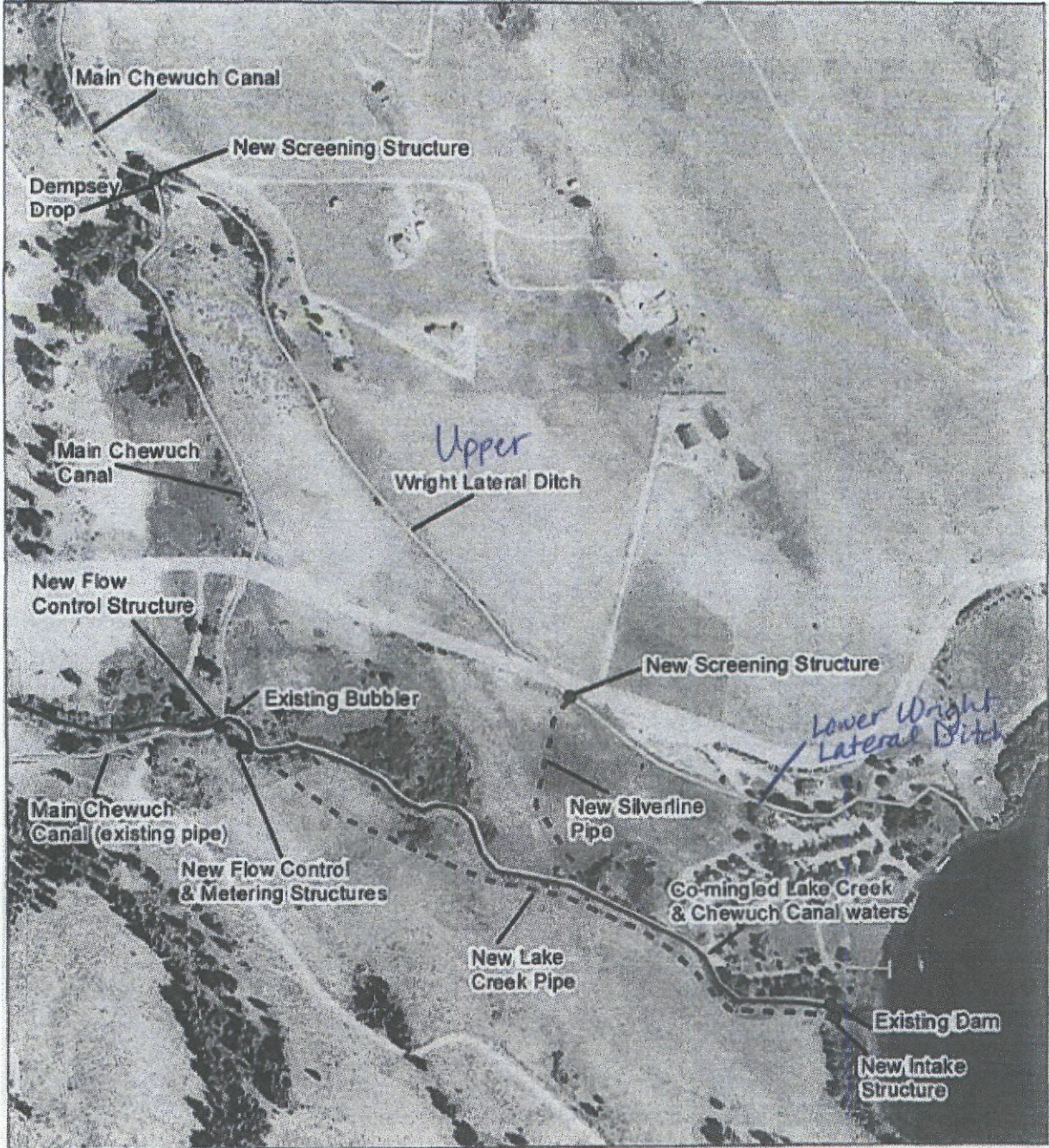
Site Visit

A site visit was conducted on May 24, 2012. The site visit was conducted by Jay Pietraszek of Golder Associates Inc. (Golder), the consultant for the Department of Ecology on the project. The site visit attendees included Lee Hatcher (Project Manager, Trout Unlimited) and Roger Rowatt (President, CCC). The purpose of the site visit was to visit the point of diversion, the Wright Lateral diversion to Pearrygin Lake, Pearrygin Lake and existing dam, and the places of use downstream of Pearrygin Lake to support preparation of this Report of Examination. A second site visit was conducted on October 16, 2012 by Carl Einberger of Golder to meet with Lee Hatcher and Roger Rowatt to discuss the proposed monitoring plan and review infrastructure plans associated with monitoring.

System Operations

As the system is currently operated, water is diverted from the Chewuch River at the diversion dam situated approximately 8 miles above the Dempsey Drop, which splits water between the Main (unnamed) Chewuch canal delivering water directly to downstream CCC users and water diverted via the Wright Lateral to Pearrygin Lake. The Main Chewuch canal is mostly unlined from the point of diversion to the Dempsey Drop. The upper portion of the Wright Lateral is unlined, but the lower portion is piped underground (beneath a campground) and enters Pearrygin Lake near the existing dam structure. Due to underground damage in the pipe entering the lake, the Wright Lateral is now limited to a flow of 9 cfs. The Wright Lateral supplies water to several shareholders along the lake under CCC's irrigation water rights, in addition to being a conduit for refilling the lake.

Figure 1: CCC's delivery system with dashed lines representing proposed improvements.



Stored water in Pearrygin Lake is conveyed down Lake Creek, Pearrygin Lake's natural outflow channel, and then diverted back into the CCC ditch at a 'bubbler' system, located about 0.5 miles below the Pearrygin Lake dam.

Infrastructure improvements and changes in system operations are needed to shorten the period of lake filling and to maximize lake filling to when Chewuch River flows are high. CCC will improve instream flows during critical periods by relying more heavily on stored water in lieu of diverting from the Chewuch River when flows are below the levels set in the Diversion Reduction Agreement. The infrastructure changes include:

- The Wright Lateral will be repaired to fix the existing damage and constriction to allow diversion of up to 27 cfs to the lake for refilling. In addition, this will continue to be a pathway for delivery to CCC's shareholders authorized to draw water directly from the lake.
- Downstream of Pearrygin Lake, Lake Creek is partially tight-lined at this time. CCC's goal is to have a fully enclosed pressurized delivery system below Pearrygin Lake.
- A new Silverline intake structure, screen and pipeline will be installed downstream of the Dempsey Drop along the Wright Lateral canal to replace the existing and inefficient primary delivery route to CCC's shareholders via the unnamed canal. The Silverline pipeline will be able to route water directly to shareholders or to the lake for refilling through the Lake Creek pipeline via a tee at its junction with the Lake Creek Pipeline. This is intended to become the primary pathway for lake refilling rather than the Wright Lateral.

When CCC's shareholders downstream of the lake cease irrigation and request that delivery of their shares be shutoff at the diversion, a lag of several hours occurs before the reduction in flow from the diversion is realized, given the large scale of the delivery system. During this time, backflow in the system flows upstream through the Lake Creek channel and piping into Pearrygin Lake. This quantity of water is considered operation spill, and is an inherent part of system operation. Reasonable amounts (i.e less than a few percent of daily conveyance amounts) of operational spill into Pearrygin Lake are considered a short term conveyance of water by CCC that will soon be delivered to shareholders; however monitoring data is lacking and is needed to substantiate this assertion.

Monitoring

The only monitoring recently being performed by CCC is of its diversion rate at the Chewuch diversion during the irrigation season. A proposed Monitoring Plan at Pearrygin Lake was submitted on April 10, 2013 by CCC's engineer, Lee Hatcher (see Figure 2 below). If new infrastructure is built and proper monitoring is conducted, the data may support a future OCPI request.

The goals of additional monitoring are:

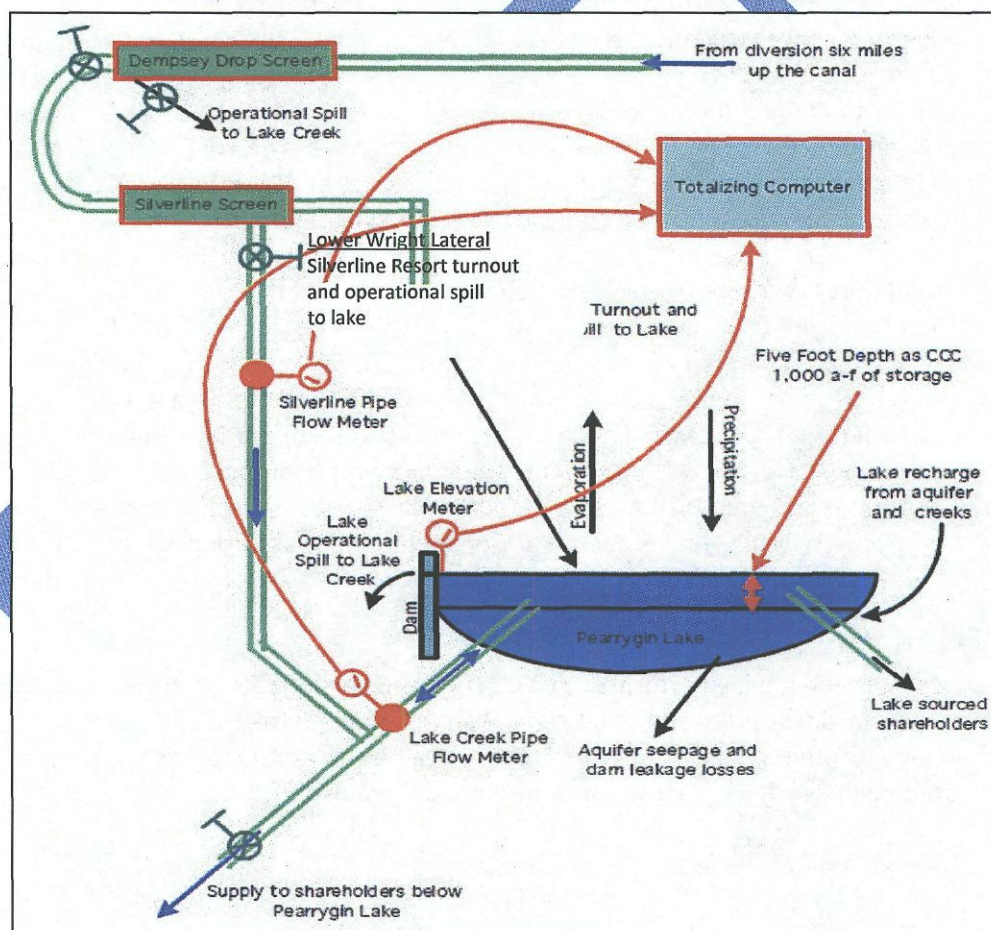
- Quantification of the actual amount of reservoir refilling each year.
- Distinguishing reservoir refilling from delivery to CCC's shareholders drawing from the Pearrygin Lake.
- Clarification of the magnitude and management of operation spill into the lake and subsequent timing of delivery to shareholders.

The proposed monitoring plan included:

- Installation and monitoring of a flow meter in the new Silverline pipeline.
- Installation and monitoring of a flow meter in the Lake Creek pipeline between the lake and the junction with the Silverline pipeline.
- Installation of a Pearrygin Lake elevation monitoring system.
- Installation of a central automated data logging system to record measure flow and level data.

The proposed monitoring plan does not account for water delivered to the lake through operational spill, particularly via the lower Wright Lateral which supplies water to the Silverline Resort Turnout. If the monitoring plan is to be used to support a potential OCPI request, the operation spill volume will need to be measured and included in the reported total volume delivered to Pearrygin Lake.

Figure 2: Pearrygin Lake Reservoir Monitoring Schematic



Extent and Validity

This change application requests only a change in the filling period of Pearrygin Lake under Reservoir Permit 9 and does not authorize any changes to diversion quantities or use of the water under Water Right Claim No. 095223 and Certificate No. 497. Reservoir Permit 9 has been used annually since its inception in 1920 and is considered a valid Water Right Permit. No metering records were available to

quantify to volume of water used for filling the reservoir, only diversion records for the main diversion into the Canal. Water levels in the reservoir are managed to be no higher than a 1923.3 foot maximum elevation establish by a Court Order. A concrete dam at the outlet to the lake was installed to provide for the 1,000 ac-ft of storage. Water spills over the dam and some water leaks under the dam. The reservoir has been filled seasonally to provide irrigation water to downstream shareholders. Shareholders on or near the lake divert directly from the lake. Conversations with CCC's engineer Lee Hatcher and their ditch rider, Udell Sanders, indicate 30 years of consistent lake filling. Lake levels maintained under the Court Order are slightly lower than the highest lake levels once maintained by the CCC up to the early 1980s.

Other Water Rights Appurtenant to the Proposed Place of Use

Water Right Claim No. 095223 and Certificate No. 497 are associated with Reservoir Permit 9 but have separate places of use for irrigation purposes. No other water rights are known to share reservoir storage in Pearrygin Lake.

Impairment Considerations

"Impair" or "impairment" means to: 1) adversely impact the physical availability of water for a beneficial use that is entitled to protection, and/or; 2) to prevent the beneficial use of the water to which one is entitled, and/or; 3) degrade the quality of the source to the point that water is unsuitable for use by existing water right holders (WAC 173-150).

CCC plans to cease or minimize diverting water from the Chewuch River during critical low flow periods in the fall. With approval of this change request, diversion for lake filling will typically occur during the early summer irrigation period of May and June, but is unlikely to extend beyond this period. CCC will not fill after July 31. CCC's maximum diversion during the irrigation season is currently 33.5 cfs, which is the maximum diversion rate possible minus a permanent 0.5 cfs reduction during the irrigation season, and is not subject to instream flows in the Chewuch River. As a condition of approval of this water right change, any diversion for reservoir filling during the irrigation period will be subject to instream flows. In addition, the portion of this water rights change that authorizes irrigation season lake refilling will be junior to all other existing rights. In the event that flows in the Chewuch River go below the minimum levels, CCC will be ordered to cease filling until flows improve above minimum levels.

The following table presents instream flows established by WAC 173-548-020. In addition, the table presents monthly average flows at the Chewuch Gauge, where instream flows are set. Measured flow data are typically well above established base flows in the early portion of the irrigation season (May and June), when CCC plans to focus irrigation season refilling, suggesting that reservoir refilling during this period would be unlikely result in reducing Chewuch River flows close to or below to instream flow limits.

| Month | Day | Chewuch River Base Flow (cfs) | Chewuch Gauge Monthly Average (cfs) |
|-------|-----|-------------------------------|-------------------------------------|
| May | 1 | 215 | 1570 |
| | 15 | 290 | 1570 |
| June | 1 | 320 | 1450 |
| | 15 | 320 | 1450 |

| | | | |
|------|----|-----|-----|
| July | 1 | 292 | 449 |
| | 15 | 110 | 449 |
| Aug | 1 | 70 | 143 |
| | 15 | 47 | 143 |
| Sept | 1 | 47 | 78 |
| | 15 | 47 | 78 |

A review of existing water rights downstream of CCC's diversion to the confluence with the Methow River was conducted. This review focused on identifying users junior to and subject to established instream flows, since they would have the highest likelihood of impairment from the proposed changes to CCC's seasonal lake refilling. The following 4 Water Right Certificates were identified, all of which divert water directly from the Chewuch River:

| File # | Name | Low FI Prov | Priority Date | Purpose | Qi | UOM | Qa | Ir Acres | TRS | QQ/Q |
|---------------|----------------------|-------------|---------------|---------|-------|-----|--------|----------|----------------|-------|
| S4-29914CWRIS | Douglas Cnty PUD 1 | Y | 2/6/1989 | FS | 6 | CFS | 1487.6 | | 35.0N 21.0E 02 | NW/NE |
| S4-28110CWRIS | RANGER JOHN & Bea | Y | 4/19/1983 | IR | 0.02 | CFS | 1 | 0.5 | 35.0N 21.0E 34 | SE/NE |
| S4-28165GWRIS | HESTER KENNETH ETUX | Y | 3/17/1983 | IR | 0.05 | CFS | 3.5 | 1 | 35.0N 21.0E 35 | SW/SW |
| S4-28181GWRIS | BEASLEY JAMES R ETUX | Y | 4/18/1983 | IR | 0.025 | CFS | 3.5 | 1 | 35.0N 21.0E 35 | NW/SW |

As previously noted, the new season of filling would be junior to all other existing rights, including those listed above. CCC would be subject to the adopted flows between May 1 and July 31 and when flows in the Chewuch River fall below the adopted minimum levels, CCC would be ordered to cease filling Pearrygin Lake until Chewuch River stream flows are above the adopted minimum flows.

Consideration of Protests and Comments

A protest letter was submitted by Lee Bernheisel of the Okanogan Wilderness League (OWL) and received on July 23, 2012. OWL had the following concerns:

1. *The totality of operation of CCC should be analyzed to properly understand if this project is in the public interest.*

Response: Ecology must determine if this change request is detrimental to the public interest. The proposed change in the timing of refilling the reservoir does not affect CCC's distribution of irrigation water to its members under Water Right Claim No. 095223, and therefore is not in the scope of this investigation.

2. *At a minimum, the proposal must analyze the underlying water claim of the CCC for validity. A tentative adjudication seems to be in order for this application.*

Response: As above, Ecology is only required to consider historic use of Permit No. 9. A 'tentative adjudication' of CCC's claim to irrigation water is not within Ecology's legal authority for this change.

3. *What other solutions have been instituted or proposed by CCC in the past. What are the public costs for this proposal?*

Response: The change application form does not require this information from the applicant. The protestant may contact Okanogan County Planning to discuss the SEPA evaluation for the overall project and any further information they may have for this site.

4. *The legal notice in the Methow Valley News misstates the publication history and needs to be advertised properly.*

Response: The Methow Valley News issued an affidavit of publication on July 31, 2012 stating that the notice had been published according to Ecology's requirements. On April 4, 2013, Ecology staff contacted the paper and asked them to double check that the notice had been published properly and the affidavit was correct. The Methow Valley News confirmed that it was.

CONCLUSIONS

It is the conclusion of this examiner that, in accordance with Chapter 90.03.380 RCW, a change in the period of diversion for Reservoir Permit 9 will not impair existing water rights, will enhance flows in Chewuch River.

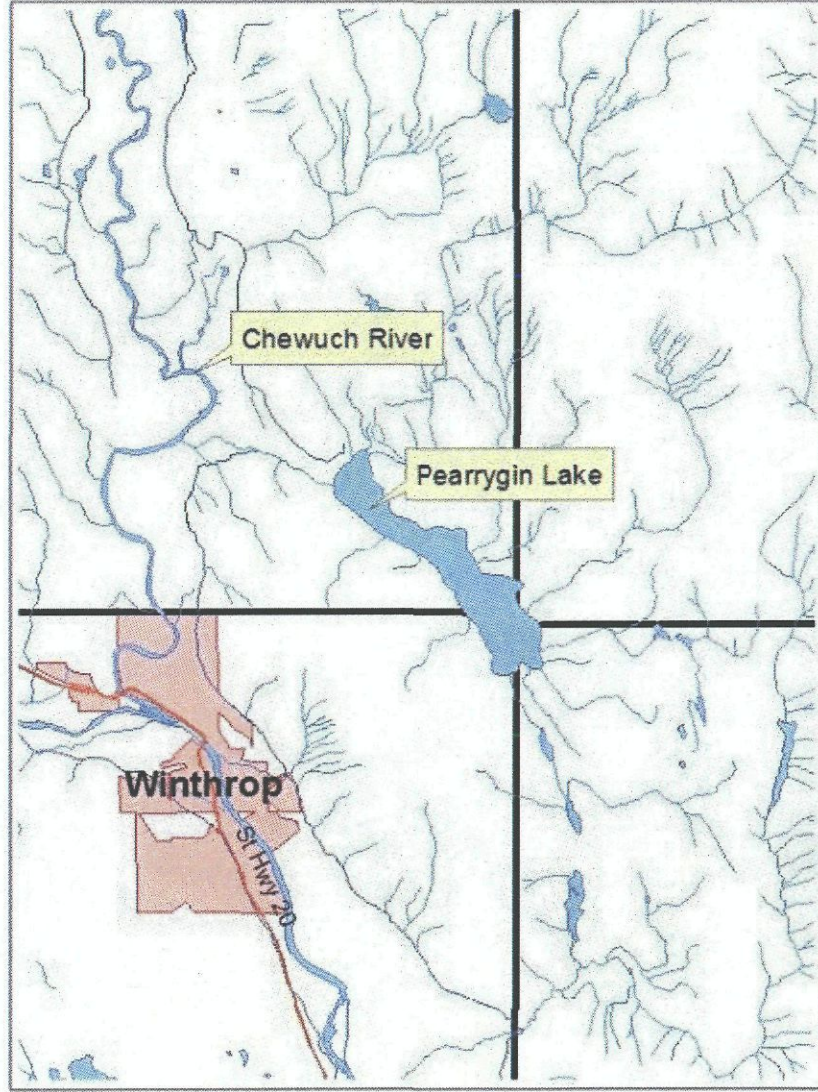
RECOMMENDATIONS

Based on the information presented above, the author recommends that:

Subject to the provisions described in this Order for Report of Examination, pages 1-4, CCC may store 1,000 ac-ft/yr in Pearrygin Lake from January 1 to July 31.

Report by: _____

_____ Date



0 1,900 3,800 7,600 Feet

Map is for reference only. Place of use and point of withdrawal are as defined in the Report of Examination.
Image is 2011 NAIP airphoto. Map Date 4/30/2013.

Chewuch Canal Company
Application Number CR4-CV1-3P18
Pearrygin Lake, WRIA 48

